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(2)

IN THE HIGH COURT OF JUDICATURE AT CHHATTISGARH – BILASPUR

W.P. No.: 603 / 2004

PETITIONER :

BADRUDDIN QURAISHY,
S/o. Late Nizamuddin Quraishy,
Aged 56 years,
Ex M.L.A., Bhilai Constituency - Govt. of Chhattisgarh
& PRESIDENT – Haj Committee – Chhattisgash
R/o. Bungalow no. 6 – 32 Bungalows, Bhilai,
Distt. : Durg (Chhattisgarh)

Versus

RESPONDENTS :

STATE OF CHHATTISGARH
Represented by Special Secretary
Adim Jati & Anusuchit Jati Vibhag
Mantralaya, Dau Kalyan Singh Bhawan
- Raipur (Chhattisgarh)

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(101)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR
(Division Bench)

CORAM : Hon'ble Shri A.K. Patnaik, CJ
& Hon'ble Shri V.K. Shrivastava, J.

WRIT PETITION NO. 640 OF 2004

Badruddin Quraishy

Versus

State of Chhattisgarh

Present : Petitioner by Dr. N.K. Shukla, Sr. Adv. with Miss Ritu Mishra, Advocate.
Respondent by Mr. Prashant Mishra, Addl. A.G.

O R D E R
(29th of March 2005)

The following Order of the Court was passed by **A.K. Patnaik, CJ**: -

The petitioner was a member of the State Legislative Assembly of the State of Chhattisgarh from Bhilai Constituency. He belongs to the National Congress Party. By a Notification dated 15/09/2003 issued under Section 18 of the Haj Committee Act, 2002 (*hereinafter referred to as 'the Act'*), the State Government nominated the petitioner as a member of the State Haj Committee. In the general election of 2003, the petitioner contested but was not elected as a member of the State Legislative Assembly of Chhattisgarh from Bhilai Constituency and as a consequence he ceased to be a Member of the State Legislative Assembly of the State of Chhattisgarh. By an order dated 11.02.2004 of the State Government, the petitioner was removed as a member of the State Haj Committee. Aggrieved, the petitioner has filed this writ petition under Article 226 of the Constitution of India praying for quashing the said order dated 11.02.2004 of the State Government.

2. In the return filed by the respondent, the State of Chhattisgarh has taken a stand that the petitioner was nominated under Section 18 (1) (i) of the Act as a Member of the State Haj Committee by virtue of his being a Member of the State Legislative Assembly of the State of Chhattisgarh and since he ceased to be a Member of the State Legislative Assembly of the

State of Chhattisgarh, he was removed as a member of the State Haj Committee.

3. Dr. N.K. Shukla, Sr. Advocate appearing for the petitioner submitted that although the petitioner was nominated by the State Government as a member of the State Haj Committee under Section 18(I)(i) of the Act by virtue of his being a member of the State Legislative Assembly, there is no provision in the Act for removal of a member of the State Haj Committee on his ceasing to be a member of the State Legislative Assembly. In this context he referred to the provisions of Section 25 of the Act to show that there is nothing in the said provision providing for removal of a member of the State Haj Committee on his ceasing to be a Member of the State Legislative Assembly. Dr. Shukla pointed out that Section 4(i) of the Act provides for nomination of a member of Parliament as a member of the Haj Committee of India and the proviso to the said Section 4(i) of the Act provides that a member of Parliament shall upon ceasing to be a member cease to be a member of Haj Committee of India. Dr. Shukla submitted that a similar proviso has not been made in Section 18 of the Act providing that a member of the State Legislative Assembly who has been nominated to the State Haj Committee will cease to be a member of the State Haj Committee on his ceasing to be a member of the State Legislative Assembly. He submitted that Section 20 of the Act provides that the term of the member of the State Haj Committee would be 3 years and hence the petitioner could not have been removed before the expiry of 3 years.

4. Mr. Prashant Mishra, learned Additional Advocate General for the State of Chhattisgarh, on the other hand, submitted that a plain reading of Section 18(I) of the Act would show that a member of the State Legislative Assembly is nominated by the State Government as a member of the State Haj Committee by virtue of his being a member of the State Legislative Assembly and therefore, when a member of the State Haj Committee ceases to be a member of the State Legislative Assembly he also ceases to be a member of the State Haj Committee. He further submitted that although there is no express provision in the Act like the proviso to Section 4(i) of the Act providing that a member of the State Legislative Assembly who has been nominated as a member of the State Haj Committee will cease to be a member of the State Haj Committee whenever he ceases to be a member of the State Legislative Assembly, this

is an inadvertent omission by the Legislature and this omission can be supplied by the Court following the principle of '*casus omissus*'. In support of his submission he cited a decision of the Supreme Court in **Union of India vs Rajiv Kumar** reported in **(2003) 6 SCC 516**.

5. Para 23 of the decision of the Supreme Court in **Union of India vs Rajiv Kumar** (*supra*) on which reliance is placed by Mr. Mishra is quoted herein below:

> "Two principles of construction – one relating to casus omissus and the other in regard to reading the statute / statutory provision as a whole – appear to be well settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself. But, at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. 'An intention to produce an unreasonable result', said Danckwerts, L.J. in *Artemiou v. Procopiou* (All ER p. 544 I), 'is not to be imputed to a statute if there is some other construction available'. Where to apply words literally would 'defeat the obvious intention of the legislation and produce a wholly unreasonable result' we must 'do some violence to the words' and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in *Luke v. IRC* where AC at p. 577 (All ER p. 664 I) he also observed: 'This is not a new problem, though our standard of drafting is such that it rarely emerges.']"

It would be clear from the principles laid down by the Supreme Court in the aforesaid decision that the casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the

four corners of the statute itself. In the aforesaid decision the Supreme Court has further explained that a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together. In para 19 of the judgment, on the other hand, the Supreme Court has held that the intention of the Legislature enacting the Act must be gathered primarily from the language used in the Act and that addition of words in the Act is to be avoided by the courts. The said para 19 of the judgment of the Supreme Court is quoted herein below:

> "19. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute or any statutory provision is to ascertain the intention of the legislature or the authority enacting it. (See *Institute of Chartered Accountants of India v. Price Waterhouse).* The intention of the maker is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in *Crawford v. Spooner,* courts cannot aid the legislature's defective phrasing of an Act; they cannot add or mend, and by construction make up deficiencies which are left there. (Also see *State of Gujarat v. Dilipbhai Nathjibhai Patel).* It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. [See *Stock v. Frank Jones (Tipton) Ltd.*] Rules of interpretation do not permit courts to do so, unless the provision as it stands is meaningless or of a doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord Loreburn, L.C.in *Vickers Sons and Maxim Ltd. v. Evans,* quoted in *Jumma Masjid v. Kodimaniandra Deviah*)."

6. Bearing in mind the aforesaid principles laid down by the Supreme Court with regard to the interpretation of statutes, we may now examine the provisions of the Act. The relevant portions of Sections 4, 18

and the provisions of Sections 20, 23, 24, 25 and 26 of the Act are extracted herein below:

CHAPTER –II

Haj Committee of India.

"4. The Committee shall consist of the following members, namely:-

(i) three members of Parliament of whom two are to be nominated by the Speaker of the House of the People from among its Muslim members, and one by the Chairman of the Council of the States from among its Muslim members:

Provided that a member of Parliament shall, upon ceasing to be a member, cease to be a member of the Committee and the Speaker of the House of the People or the Chairman of the Council of States, as the case may be, shall make afresh nomination, upon request by the Central Government.

CHAPTER III

State Haj Committees

18. (*1*) A State committee shall consist of sixteen members, to be nominated by the State Government, namely:-

(i) three members from the Muslim members of-

(a) Parliament representing the State;

(b) State Legislative Assembly; and

(c) Legislative Council, where it exists.

20. (1) The term of office of the members of the State Committee (other than the ex officio members and members filling casual vacancies) shall be three years, commencing on the day following the publication of the list of members under Section 19.

(2) The allowances payable to, and the other terms and conditions of the Chairperson and members shall be such as may be prescribed.

23. A person shall be disqualified for being nominated, or for continuing, as a member of the State Committee, if he-

(i) is not a citizen of India;

(ii) is not a resident of that State;

(iii) is not a Muslim, except for an Executive Officer as provided in clause (vi) of sub-section (l) of section 18;

(iv) is less than twenty-five years of age;

(v) is of unsound mind and stands so declared by a competent court;

(vi) is an undischarged insolvent;

(vii) has been convicted of an offence which, in the opinion of the State Government, involves a moral turpitude;

(viii) has been on a previous occasion-

(a) removed from his office as a member; or

(b) removed by an order of a competent authority either for not acting in the interest of the pilgrims or for corruption.

24. The Chairperson or any other member may resign his office by writing under his hand addressed to the State Government and it shall be effective from the date of such resignation.

25. (l) The State Government may, by notification in the Official Gazette, remove the Chairperson of the State Committee or any member thereof, if he-

(i) is or becomes subject to any of the disqualifications specified in section 23; or

(ii) refuses to act or is incapable of acting or acts in a manner which the State government, after hearing any explanation that he may offer, considers to be prejudicial to the interests of the State Committee or the interest of the pilgrims; or

(iii) fails, in the opinion of the State Committee, to attend three consecutive meetings of the State Committee, without sufficient excuse.

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26. (1) When the seat of a member becomes vacant by his removal, resignation, death or otherwise, a new member shall be nominated in his place and such member shall hold office so long as the member whose place he fills would have been entitled to hold office if such vacancy had not occurred."

7. It would be clear from the language used in section 4 (i) of the Act that three members of Parliament can be nominated to the Haj Committee of India. Out of these three members of Parliament, two members are to be nominated by the Speaker of the House of the People from among its Muslim members, and one member is to be nominated by the Chairman of the Council of the State from among its Muslim members. The proviso to section 4 (i) expressly states that a member of Parliament shall upon ceasing to be a member, cease to be a member of the Haj Committee of India and the Speaker of the House of the People or the Chairman of the Council of the State, as the case may be, shall make a fresh nomination upon request by the Central Government. A reading of section 18(1) the Act would show that the three members from the Muslim members of Parliament representing the State; State Legislative Assembly; and Legislative Council, where it exists are to be nominated by the State Government to the State Haj Committee. But there is no provision whatsoever in section 18(1) similar to proviso to section 4(i) of the Act providing that a member of the State Haj Committee shall cease to be such a member of the State Haj Committee on his ceasing to be a member of Parliament, the State Legislative Assembly or Legislative Council as the case may be. The fact that Parliament has not made any express provision similar to the proviso to section 4(i) of the Act in section 18(1) of the Act would show that the Legislature never intended to provide that a member of Parliament, a member of State Legislative Assembly or a member of Legislative Council nominated by the State Government to be a member of the State Haj Committee shall cease to be a member of the State Haj Committee as soon as he ceased to be a member of Parliament, State Legislative Assembly or a member of Legislative Council as the case may be. We cannot possibly accept the submission of Mr. Mishra that this was in an inadvertent omission on the part of the Parliament and that this omission should be supplied by the Court by applying the principle of *casus omissus*. This is because we do not find any provision within the four

corners of the Act that a member of Parliament, the State Legislative Assembly or the State Legislative Council nominated as a member of the State Haj Committee under Section 18(1) of the Act is to cease to be a member of the State Haj Committee on his ceasing to be a member of Parliament, member of State Legislative Assembly or a member of the Legislative Council. There is nothing in section 25 read with section 23 that as soon as a member of Parliament, a member of Legislative Assembly or a member State Legislative Council nominated to the State Haj Committee under section 18 of the Act ceases to be a member of Parliament, member of State Legislative Assembly or a member of State Legislative Council is to be removed from the State Haj Committee.

8. Mr. Mishra submitted that section 26(1) of the Act provides that when the seat of a member becomes vacant by his removal, resignation, death or otherwise, a new member shall be nominated in his place. He argued that the expression 'otherwise' in section 26(1) would indicate that a seat of a member of the State Haj Committee can become vacant when a member of the State Haj Committee nominated under section 18(1) of the Act by the State Government ceases to be a member of Parliament, member of State Legislative Assembly or a member of the State Legislative Council. It is difficult to accept the said submission of Mr. Mishra. Section 26(1) of the Act provides for nomination of a new member of the State Haj Committee when a seat of a member becomes vacant. The question of such nomination of new member would arise only after the seat of a member of the Haj Committee becomes vacant on account of his removal, resignation, death or otherwise. This provision cannot be invoked for making out a case of removal of a member unless such case of removal is provided for in section 25 of the Act.

9. Section 20 of the Act provides that the term of office of the members of the State Haj Committee shall be three years commencing on the day following the publication of the list of members under section 19 of the Act. The petitioner was appointed as a member of the State Haj Committee on 15.09.2003 and his term of three years as provided in section 20 of the Act was not complete when the impugned order dated 11/02/2004 was passed. He could be removed before the expiry of the said period of three years only on the grounds mentioned in Section 25 of the Act.

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10. In the result the impugned order dated 11.02.2004 in Annexure P-1 is quashed and the writ petition is allowed. Considering the facts and circumstances of the case, the parties shall bear their own costs.

Sd/-
Chief Justice
Judge

Sd/-
V.K. Shrivastava
Judge

Evalesh*